

APPLICANT:
Stepney Road Holding Limited Partnership

REQUEST: Rezone 83.72 acres from
R2/GI/CI District to R2/R3 District

HEARING DATE: August 23, 2006

BEFORE THE
ZONING HEARING EXAMINER
FOR HARFORD COUNTY
BOARD OF APPEALS

Case No. 117

ZONING HEARING EXAMINER'S DECISION

APPLICANT: Stepney Road Holding Limited Partnership

LOCATION: NE corner of MD Route 7 and Stepney Road, Aberdeen, Maryland
Tax Map: 58 / Grid: 2C / Parcel: 59
Second (2nd) Election District

ZONING: R2/Urban Residential, CI/Commercial Industrial, GI/General Industrial

REQUEST: A rezoning pursuant to Section 267-12A of the Harford County Code to
rezone 83.72 acres from a R2/GI/CI District to R2/R3 District

TESTIMONY AND EVIDENCE OF RECORD:

For the Applicant testified James F. Knott, who identified himself as a real estate developer and President of James F. Knott Development, a general partner of the Applicant, Stepney Road Holding Limited Partnership.

Mr. Knott described the overall land area owned by the Applicant as consisting of approximately 300 acres, located generally at the northeast corner of the intersection of Route 7 and Stepney Road.

According to Mr. Knott much of the subject property is now used as Beechtree Golf Course. Mr. Knott explained that the original plan for properties, which were acquired in the early 1980's, was to develop them as an industrial park. These plans changed, however, after the State acquired a significant holding, by quick take condemnation, on the south side of the parcel for relocated Maryland Route 7.

According to Mr. Knott (as amplified by the Staff Report), the zoning of the subject property was changed from M1/Light Industrial to GI/General Industrial District during the 1982 Comprehensive Zoning Review. A strip of land along Stepney Road was changed from A1 zoning to R1 to buffer the residential uses on the west side. A small portion of the property at Route 7 and Stepney Road was rezoned to B1/Neighborhood Business District.

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According to Mr. Knott, after the State condemnation of a portion of the property for the relocated Route 7, and during the 1989 Comprehensive Rezoning, the area along Stepney Road was zoned GI/General Industrial, and the rest of the property remained GI/General Industrial. An additional change during the early 1990's increased the amount of the subject property which was considered wetlands and, as a result, this increased the non-buildable portion of the property.

Mr. Knott explained that as a result of the reduction in available land due to the State quick take condemnation, and the change in State regulations which increased wetlands onsite, as well as the changing character of the neighborhood to a more residential use, a request for rezoning was made in 1996. The Applicant requested, and was granted, a rezoning of approximately 219 acres from GI to R2. This approval allowed the Applicant to construct the present Beechtree Golf Course on a portion of the overall tract.

The Applicant, as part of this rezoning process, agreed to not build homes on the property for a period of five (5) years. Mr. Knott explained that the owner of the property began to realize that industrial development on the remaining property was becoming increasingly uneconomic, and it was apparent that residential uses on the remaining, non-golf course property, were preferred uses.

Mr. Knott testified that the building of the golf course made it even more impractical to construct commercial or warehouse uses on the remaining property.

Mr. Knott now believes that the remaining property, being the property which is the subject of this application, is most appropriate for residential use. The surrounding golf course, increased wetlands and open space onsite makes the property more attractive for residential than commercial or industrial uses. He believes that the rezoning of the property and resulting residences would be an asset to the county.

The Harford County Department of Planning and Zoning Staff Report notes that in the 2005 Comprehensive Zoning, eventually vetoed by the County Executive, the Applicant requested that 88 acres (the present application is for 84 acres) of the subject property to be rezoned from GI and CI to R3. The County Council approved rezoning of the property to R2 and R3.

Next appeared John Call, a neighbor, for the purpose of cross-examining Mr. Knott. Mr. Knott agreed, in response to Mr. Call's questioning, that there will probably be, at some time in the future, an entrance on Route 7, close to the intersection of Stepney Road and Maryland Route 7, in order to access the residential properties to be built on the subject property. Mr. Call is generally concerned about traffic. Mr. Knott does not believe that an entrance will be on Stepney close to the intersection, but at this point he is not certain as the development of the property is some years off.

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Next for the Applicant testified Sean Davis, an engineer employed by Morris & Ritchie Associates. Mr. Davis was offered and accepted as an expert in planning, zoning and land use. Mr. Davis agreed with the description of the property as given by Mr. Knott. His representation of the zoning history was accurate. He confirmed that the golf course property itself is not a part of the land which is the subject of this application.

Mr. Davis explained that the 1996 Master Land Use Plan delineated the property as industrial employment. The property shown in this category includes the Beechtree Golf Course. The 2004 Land Use Plan (which is the current Land Use Plan), shows the entire holdings of the Applicant, including the 84 acres which are the subject of this application, as medium intensity.

Mr. Davis stated that the predominant land use in the area is residential. The property to the east – owned by Frito Lay – is zoned General Industrial but is encumbered by extensive environmental features onsite. As a result, its future industrial development will be difficult, if not impossible. Nevertheless, the Frito Lay property is also shown as medium intensity.

Mr. Davis believes that the current zoning of CI and GI, while consistent with the 1997 Master Land Use Plan, is not consistent with the 2004 Master Land Use Plan which shows the property as medium intensity. Mr. Davis believes that a change in the land use designation was made in 2004 because of a change in the make-up of the neighborhood, which is now predominantly residential in nature, and also in consideration of the rather significant environmental features of the area.

Mr. Davis also agrees that the reconfiguration of Maryland Route 7, which took place after the County's quick take condemnation, the construction of the golf course, the extensive environmental features onsite, and the increase in residential development of the area are all reasons to change the zoning of the subject property to residential.

Mr. Davis believes that the Harford County Council, in its 1997 Comprehensive Zoning review, did not take into account these factors. Accordingly, Mr. Davis is of the opinion that the Council mistakenly zoned the property in 1997 from GI to CI, and in not rezoning the property subject to this application to a residential use.

Mr. Davis further opined that the subject property is not viable for industrial uses. The topography slopes north towards a stream which, together with the existing wetlands, leave very little developable space for large industrial uses.

Mr. Davis identified Applicant's Exhibit No. 21 which shows the outline of what Mr. Davis believes constitutes the neighborhood of the subject property. Generally, he believes the neighborhood stretches on its south side along U. S. Route 40, north to Interstate 95, along I-95 to Maryland Route 543 and back to Maryland Route 7.

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Mr. Davis believes that his definition of the neighborhood is similar to that of the Harford County Department of Planning and Zoning although Route 7 is used by the Department of Planning and Zoning as the southerly boundary of the neighborhood, not Route 40 as shown by Mr. Davis. Mr. Davis also notes that in the future additional housing in that area will be necessary due to the Base Relocation Process which will create a demand a variety of housing types.

Mr. Davis also believes that a substantial change has occurred in the neighborhood as he has defined it, which includes the subject property. The changes which Mr. Davis believe justifies the change in the rezoning are the following: 1) increased need for residential units due to Base Realignment Closure process (BRAC); 2) the relocation of Maryland Route 7 and the effect it has had on the subject property; and 3) the development of the Beechtree Golf Course adjacent to the subject site.

Next for the Harford County Department of Planning and Zoning testified Peter Gutwald. Mr. Gutwald, in reiterating the findings of the Staff Report, described the property as being in the Development Envelope. The Department does not believe substantial change has occurred in the area since the time of the last rezoning which was not anticipated at that time. The Applicant's argument concerning the impact of BRAC is not a basis for the finding of change as the BRAC process is only just beginning and has not caused any significant impact on the County.

However, the Department agrees that a mistake did occur for the reasons generally outlined by Mr. Davis. Mr. Gutwald recited the fact that while the subject property was previously designated as Industrial Employment on the 1996 Land Use Plan, the 2004 Land Use Plan shows the property as Medium Intensity. Furthermore, the location of environmentally sensitive areas, such as streams, wetlands, and flood plain make the property difficult to develop industrially. Mr. Gutwald believes that the County Council in the 1997 comprehensive zoning review failed to take these characteristics into account, nor did it consider the increasing residential use of the neighborhood and the development and use of the adjoining Beechtree Golf Course. All of these factors support Mr. Gutwald's and the Department's opinion that the property should not have been zoned CI or GI in the 1997 comprehensive zoning and that, in fact, R3 is the most appropriate zoning category for the property.

No testimony or evidence was given in opposition.

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APPLICABLE LAW:

Section 267-12 A. Zoning Reclassifications States:

“A. Application initiated by property owner.

(1) Any application for a zoning reclassification by a property owner shall be submitted to the Zoning Administrator and shall include:

(a) The location and size of the property.

(b) A title reference or a description by metes and bounds, courses and distance.

(c) The present zoning classification and the classification proposed by the applicant.

(d) The names and addresses of all persons, organizations, corporations or groups owning land, any part of which lies within five hundred (500) feet of the property proposed to be reclassified as shown on the current assessment records of the State Department of Assessments and Taxation.

(e) A statement of the grounds for the application, including:

[1] A statement as to whether there is an allegation of mistake as to the existing zoning and, if so, the nature of the mistake and facts relied upon to support this allegation.

[2] A statement as to whether there is an allegation of substantial change in the character of the neighborhood and, if so, a precise description of such alleged substantial change.

(f) A statement as to whether, in the applicant's opinion, the proposed classification is in conformance with the Master Plan and the reasons for the opinion.”

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The Applicant requests a change in the zoning of the property. An initial presumption exists that the Board of Appeals must consider in determining whether any such request should be granted:

“It is presumed that the original zoning was well planned, and designed to be permanent; it must appear, therefore, that either there was a mistake in the original zoning or that the character of the neighborhood changed to an extent which justifies the amendatory action.” See Wakefield v. Kraft, 202 Md. 136 (1953).

It is a “rudimentary” principle of zoning review that there exists a:

“. . . strong presumption of correctness of the original zoning and a comprehensive rezoning.” See Stratakis v. Beauchamp, 268 Md. 643 (1973).

In considering an:

“. . . application for reclassification, there must first be a finding of substantial change to the character of the neighborhood or a mistake in the comprehensive plan.” See Hardesty v. Dumphy, 259 Md. 718 (1970).

Furthermore, case law dictates that legally sufficient evidence must exist to show “substantial change” in the character of the neighborhood, and not a “mere change” which may very well fail to rise to the level of being based upon legally sufficient evidence to justify a finding of change to the neighborhood. See, generally, Buckel v. Board of County Commissions of Frederick County, 80 Md. App. 05 (1989)

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

The Applicant is the owner of approximately 300 acres located at the northeastern intersection of Stepney Road and Maryland Route 7, close to U. S. Route 40. The property has undergone a change in planned uses over the years. Originally, the property was purchased in the 1980's with the intention of developing it for industrial purposes. According to the Staff Report, as early as 1971 the property had been zoned for industrial purposes. Generally, this zoning continued throughout the 1983 comprehensive zoning review and the 1989 comprehensive zoning review, with some small change along Stepney Road the Maryland Route 7. The major change from this zoning was in 1996 when the Applicant requested a piece meal rezoning from GI to R2 on approximately 219 acres. This portion of the overall tract was generally the northerly part of the property. Left in its industrial zoning category is the property which is the subject of this application, being approximately 84 acres along Stepney Road and extending along Route 7 and up the CSX Railroad.

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The Applicant's witnesses testified, convincingly, that this requested change in use is necessitated by a number of reasons. The first was the condemnation and taking by the State of portions of the property to the south in order to relocate Maryland Route 7 which left a small island of about six acres on the south side of the property, and south of Maryland Route 7. That property is included in this application. Furthermore, due to change in government regulations, the amount of property which is now classified as wetlands has increased. The Applicant and witnesses acknowledge that the property contains a significant area of wetlands which, together with their associated buffers, limit if not preclude the development of the property for industrial type uses.

Last but not least was the change in the neighborhood from what was originally planned to be an industrial area to one which is an increasingly residential area. Mr. Knott explained that these factors combined to change the Applicant's plans for the property to a less intensive golf course use.

Mr. Knott further testified that as part of the 1997 rezoning process the Applicant agreed not to develop residential uses on the southerly portion of the property for a period of five years. That decision obviously anticipated, even though the property in question remained zoned GI, that residential uses would be considered in the area.

Mr. Knott and Mr. Davis also point out that the change in the neighborhood was evidenced by a change in the 1996 Master Land Use Plan, which identified the property as Industrial Employment, to the current Master Land Use Plan, enacted in 2004, which designated the property as Medium Intensity. 'Medium Intensity' is defined by the 2004 Master Land Use Plan as:

"Areas within the development envelope where residential development is the primary land use. Density values from 3.5 to 7.0 dwellings units per acre. Grocery stores, variety stores and other commercial uses are examples of some of the more intensive uses associated with this designation."

Clearly, industrial development, which would be allowed in the GI zoning, could be undertaken only in conflict with the Plan.

On the other hand, the Master Land Use Plan specifically allows the type of residential development which the Applicant's requested zoning would allow.

However, a change in the Master Land Use Plan is not a basis for a change in zoning.

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Furthermore, the opinion of the Department of Planning and Zoning is that no substantial change in the overall character of the neighborhood since the time of the last rezoning has been shown. The last comprehensive zoning of this property was in 1997. By that time the Applicant had received its piece-meal approval for the golf course. Accordingly, the County Council was charged with knowledge of the change in the area. While the argument of substantial change is an interesting one, there is simply no evidence of a change in the neighborhood since 1997 so as to justify a change in present zoning.

Accordingly, for these reasons, the Applicants' suggestion of a substantial change in the neighborhood since 1997 so as to justify a change in zoning is rejected. However, it is found that the Harford County Council in the 1997 Comprehensive Rezoning made a mistake in not zoning the property to residential use. The Harford County Council instead retained on the property GI zoning in 1997 and also changed the property south of Route 7 from GI to CI. That was a mistake. The Council did not consider the factors recited by the Applicant, and agreed to by the Department of Planning and Zoning in its review of this property. Quite obviously, residential changes in the area had taken place so as to make industrial development on this property less desirable and less likely. A review of the site plan clearly shows residential development both west of Stepney Road, and south of Maryland Route 7. Furthermore, it is found that the planned existence of Beechtree Golf Course was certainly well known by the Council in 1997 due to the 1996 piece meal rezoning. In light of this it is difficult to imagine that the property to the south of the golf course, and to the north of Route 7, should have been found by the Council to be more appropriate for industrial use than residential. Furthermore, the Applicant suggests that industrial uses require large blocks of land which are not impacted by sensitive wetlands. All of these factors mitigate against the use of the property for industrial purposes and, in fact, favor residential purposes. It is accordingly found the County Council was mistaken in zoning the property GI and CI in 1997.

Having found, however, that the Harford County Council made a mistake in 1997 does not mandate a finding that the property should be zoned R3, Urban Residential, as requested by the Applicant. Nevertheless, the actions of the Harford County Council in 2005 must be considered when determining the most appropriate zoning category for this property. The Harford County Council agreed that the property should be zoned R2 and R3 at that time. Mr. Gutwald and the Harford County Department of Planning and Zoning recommend R3 zoning, with Mr. Gutwald explaining that due to environmental and topographical constraints, R3 density would vary little from that of R2 zoning.

Furthermore, no suggestion was made that the property should be zoned to any district other than R3.

It is, accordingly, found that the most appropriate zoning designation for the subject property is R3.

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CONCLUSION:

It is accordingly found that the Harford County Council was mistaken in its 1997 zoning of the property to CI and GI. It is further recommended that, as requested, the appropriate zoning category of the subject property be R3 – Urban Residential.

Date: October 6, 2006

ROBERT F. KAHOE, JR.
Zoning Hearing Examiner

Any appeal of this decision must be received by 5:00 p.m. on NOVEMBER 3, 2006.